

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**DEBORAH GASSER**

**PLAINTIFF**

v.

**4:06CV01369-WRW**

**AAA LIMO, JLS, INC. a/k/a RAILCREW  
EXPRESS, a/k/a SAMMS MOTOR CLUB**

**DEFENDANT**

**ORDER**

Pending is Defendant JLS, Inc. d/b/a AAA Limo's,<sup>1</sup> Motion for Judgment to Dismiss (Doc. No. 6). Plaintiff has responded (Doc. No. 11). Plaintiff claims that Defendant sexually harassed her in violation of Title VII of the Civil Rights Act of 1964. In response, Defendant argues that Plaintiff did not file a timely complaint.

In order to bring a Title VII claim, an individual must: (1) timely file a charge of discrimination with the EEOC setting forth the facts and nature of the charge and (2) receive notice of the right to sue.<sup>2</sup> Once an individual receives notice of the right to sue, she has 90 days in which to file suit.<sup>3</sup>

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<sup>1</sup>Defendant claims that Plaintiff incorrectly referred to it as "AAA Limo and JLS, Inc. a/k/a RailCrew Express, a/k/a Samms Motor Club."

<sup>2</sup>*Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 222 (8th Cir. 1994).

<sup>3</sup>*Williams v. Thompson Corp.*, 383 F.3d 789, 790 (8th Cir. 2004); *Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 222 (8th Cir. 1994); 42 U.S.C. § 2000e-5(f)(1).

Plaintiff received a right to sue letter from the EEOC on September 6, 2005.<sup>4</sup> Plaintiff filed her first complaint on September 27, 2005.<sup>5</sup> However, Plaintiff's first complaint was dismissed on May 19, 2006, for failing to serve Defendant as required under Fed. R. Civ. P. 4.<sup>6</sup>

Plaintiff filed a second complaint on September 27, 2006.<sup>7</sup> Plaintiff's first complaint was timely filed; however, this did not toll the ninety day requirement. "When a claim is involuntarily dismissed, it is treated as if it were never filed."<sup>8</sup> Accordingly, Defendant's motion is GRANTED, and Plaintiff's second complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this 19<sup>th</sup> day of October, 2006.

/s/Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup>Doc. Nos. 1 and 6.

<sup>5</sup>*Grasser v. AAA Limo, et al.*, No. 4:05CV1330-WRW, Doc. No. 1.

<sup>6</sup>*Id.* at Doc. No 47.

<sup>7</sup>*Grasser v. AAA Limo, et al.*, No. 4:06CV01369-WRW, Doc. No. 2.

<sup>8</sup>*C.H. Robinson Co. v. Paris & Sons, Inc.*, 180 F. Supp. 2d 1002, 1019 (N.D. Iowa 2001); Cf. *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992) (stating involuntary dismissal for lack of prosecution treated as with prejudice because "[i]f a Title VII complaint is timely filed pursuant to an EEOC right-to-sue letter and is later dismissed, the timely filing of the complaint does not toll the ninety-day limitations period").